

MARK J. BENNETT 2672  
Attorney General of Hawaii

2007 OCT 10 AM 8:28

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Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

HAWAII LABOR  
RELATIONS BOARD

Attorneys for Complainant DARWIN L.D. CHING,  
Director of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

|                               |   |                                  |
|-------------------------------|---|----------------------------------|
| In the Matter of              | ) | CASE NO. OSH 2007-16             |
|                               | ) | (Inspection No. 310389937)       |
| DIRECTOR, DEPARTMENT OF LABOR | ) |                                  |
| AND INDUSTRIAL RELATIONS,     | ) |                                  |
|                               | ) | STIPULATION AND SETTLEMENT       |
| Complainant,                  | ) | AGREEMENT; EXHIBIT A-B; APPROVAL |
|                               | ) | AND ORDER                        |
| vs.                           | ) |                                  |
|                               | ) |                                  |
| AJ CONSTRUCTION, INC.,        | ) |                                  |
|                               | ) |                                  |
| Respondent.                   | ) |                                  |

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Darwin L.D. Ching, Director of Labor and Industrial Relations

("Director") and Respondent AJ CONSTRUCTION, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about April 10, 2007, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 1112 1<sup>st</sup> Avenue, Honolulu, Hawaii 96816.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on May 11, 2007 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$11,000.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 1112 1<sup>st</sup> Avenue, Honolulu, Hawaii 96816.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See Exhibit A.*
6. The Director reduces the aggregate penalty from \$11,000.00 to \$7,700.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. In consideration of the reduction of the aggregate penalty, Respondent agrees that it will enforce its Disciplinary Action Policy, *see* Exhibit B, and will actively monitor its employees to ensure that its Disciplinary Action Policy is effectively enforced.

8. If Respondent fails to fulfill any condition of this Agreement, the original penalty amount shall automatically and without further notice be reinstated to \$11,000.00 and shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

10. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

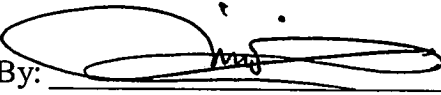
11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

12. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

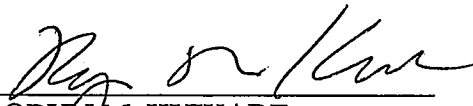
13. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, October 10, 2007.

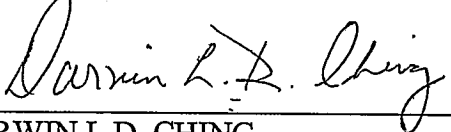
AJ CONSTRUCTION, INC.

By:   
Its \_\_\_\_\_

APPROVED AS TO FORM:

  
ROBYN M. KUWABE  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

  
DARWIN L.D. CHING

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 266

  
JAMES B. NICHOLSON, Chair

  
EMORY J. SPRINGER, Member

  
SARAH R. HIRAKAMI, Member

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813  
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7005 1820 0003 3812 3454

## Citation and Notification of Penalty

To:  
AJ Construction Inc  
and its successors  
94-065 Waipahu Depot Rd #B  
Waipahu, HI 96797

Inspection Number: 310389937 (Conroy Dang)  
Inspection Date(s): 04/10/2007 - 04/10/2007  
Issuance Date: 05/11/2007  
OSHC ID: R1844  
Optional Report No.: 027-07  
Inspection Type: Referral  
Scope of Inspection: Partial Inspection

Inspection Site:  
1112 1st Ave  
Honolulu, HI 96816

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on

~~05/11/2007. The conference will be held at the HIOSH office located at 830 PUNCHBOWL~~

STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees

and/or representatives of employees have a right to attend an informal conference.



**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 310389937  
Inspection Dates: 04/10/2007 - 04/10/2007



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 05/11/2007

**Citation and Notification of Penalty**

Company Name: AJ Construction Inc  
Inspection Site: 1112 1st Ave, Honolulu, HI 96816

**Citation 1 Item 1 Type of Violation: Repeat**

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Two construction employees were observed walking and working on a residential roof that was 16 feet above the ground. There was no type of fall protection system in place, thus the employees were exposed to a potential fall hazard. A fall to a lower level exposes the employees to potential serious injuries or death.

29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure."

AJ Construction Inc was previously cited for violations of this occupational safety and health standard (29 CFR 1926.501(b)(13)), which is contained in HIOSH inspection number 309457984, citation number 1, item number 1, issued on August 14, 2006, for job site at 642 Magellan Avenue, Honolulu, Hawaii 96813 and which became a final order on September 12, 2006; in HIOSH inspection number 308489079, citation number 1, item number 1, issued on November 9, 2005, for job site at 3445 Kilauea Avenue, Honolulu, Hawaii 96816 and which became a final order on December 19, 2005; in HIOSH inspection number 308486588, citation number 1, item number 5, issued on June 16, 2005, for job site at 2115 Lime Street, Honolulu, Hawaii 96826 and which became a final order on July 21, 2005.

Location: Project site at 1112 1st Avenue

Date By Which Violation Must be Abated:  
Penalty:

05/15/2007  
\$10,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 310389937  
Inspection Dates: 04/10/2007 - 04/10/2007



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 05/11/2007

**Citation and Notification of Penalty**

Company Name: AJ Construction Inc  
Inspection Site: 1112 1st Ave, Honolulu, HI 96816

**Citation 2 Item 1** Type of Violation: **Serious**

29 CFR 1926.503(a)(1) [Refer to chapter 12-121.2, HAR] was violated because:

Two construction workers were working on a roof of a residential structure that was 16 feet above the ground. One of the construction workers did not receive certified training in fall hazards and protection. A fall to a lower level exposes the workers to potential serious injuries or death.

29 CFR 1926.503(a)(1) states "The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards."

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

06/13/2007  
\$1,000.00

NELSON B. BEFITEL  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

**Department of Labor and Industrial Relations**

**HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION**

**830 PUNCHBOWL STREET, ROOM 425**

**Honolulu, HI 96813**

**SUMMARY OF PENALTIES**

**Company Name:** AJ Construction Inc  
**Inspection Site:** 1112 1st Ave  
Honolulu, HI 96816  
**Issuance Date:** 05/11/2007

**Summary of Penalties for Inspection Number 310389937**

|                      |   |             |
|----------------------|---|-------------|
| Citation 01, Repeat  | = | \$10,000.00 |
| Citation 02, Serious |   | \$1,000.00  |

|                        |          |                    |
|------------------------|----------|--------------------|
| <b>TOTAL PENALTIES</b> | <b>=</b> | <b>\$11,000.00</b> |
|------------------------|----------|--------------------|

**Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.**

**If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.**

**State of Hawaii**

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813

**SUMMARY OF PENALTIES**

**Company Name:** AJ Construction Inc  
**Inspection Site:** 1112 1st Ave  
Honolulu, HI 96816  
**Issuance Date:** 05/11/2007

**Summary of Penalties for Inspection Number** 310389937

**Citation 01, Repeat** = \$10,000.00  
**Citation 02, Serious** \$1,000.00

**TOTAL PENALTIES** = \$11,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

454E 278E E000 029T 5001

**U.S. Postal Service<sup>TM</sup>**  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
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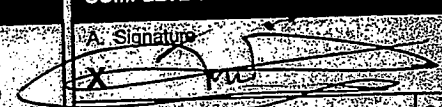
**OFFICIAL USE**

|   |         |         |           |
|---|---------|---------|-----------|
| Safety  | Postage | \$ .87  | 310389937 |
| Certified Fee                                     |         | \$ 2.40 |           |
| Return Receipt Fee<br>(Endorsement Required)      |         | \$ 1.85 |           |
| Restricted Delivery Fee<br>(Endorsement Required) |         |         |           |
| Total Postage & Fees                              |         | \$ 5.12 |           |

Sent To  
**AJ Construction, Inc.**  
 Street, Apt. No.,  
 or P.O. Box No. **94-065 Waipahu Depot Road, #B**  
 City, State, ZIP+4<sup>®</sup>  
**Waipahu, Hawaii 96797**

PS Form 3800, June 2002 See Reverse for Instructions

6/04/07

| SENDER: COMPLETE THIS SECTION  | COMPLETE THIS SECTION ON DELIVERY  |
|--|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> | <p>A. Signature </p> <p><input type="checkbox"/> Agent<br/> <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <b>Mr. Ernesto Lorenzo</b> C. Date of Delivery <b>6/04/07</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>         If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p> |
| <p>1. Article Addressed to: <b>310389937</b></p> <p><b>Mr. Ernesto Lorenzo</b><br/> <b>Journeyman Carpenter</b><br/> <b>AJ Construction, Inc.</b><br/> <b>94-065 Waipahu Depot Road, #B</b><br/> <b>Waipahu, Hawaii 96797</b></p>  | <p>3. Service Type<br/> <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>   |
| <p>2. Article Number<br/>         (Transfer from service label)</p>  | <p><b>7005 1820 0003 3812 3454</b></p>   |
| PS Form 3811, February 2004  | Domestic Return Receipt 102595-02-M-1540   |

**AJ CONSTRUCTION INC.**

**PHONE: 678-8505**

**FAX: 678-8665**

**FACSIMILE TRANSMITTAL SHEET**

**TO:**

**Robyn M. Kuwabe**

**FROM:**

**Elma A. Padleb**

**COMPANY:**

**DAG Labor Division**

**DATE:**

**7/23/2007**

**FAX NUMBER:**

**586-1376**

**TOTAL NO. OF PAGES INCLUDING COVER:**

**3**

**PHONE NUMBER:**

**SENDER'S REFERENCE NUMBER:**

**N/A**

**RE:**

**See Notes/Comments**

**YOUR REFERENCE NUMBER:**

**N/A**

☐ URGENT    ☒ FOR REVIEW    ☐ PLEASE COMMENT    ☐ PLEASE REPLY    ☐ PLEASE RECYCLE

**NOTES/COMMENTS:**

**Policies on Safety and Disciplinary Action.**

**Thank you.**

**EXHIBIT B**

2007 JUL 24 AM 10:59

RECEIVED  
STATE OF HAWAII  
ATTORNEY GENERAL  
LABOR DIVISION

## 2. POLICY ON SAFETY PROGRAM

This company will operate with the intentions of providing a safe and rewarding work environment for its personnel and provide a quality product or service to our customers.

- A. This company is sincerely interested in the personal safety of its employees. It is our policy to provide safe working conditions, adopt and use safe work methods, and make available to employees and require them to use such safety devices as may be necessary and/or advisable.
- B. **Elma A. Pacleb** shall be responsible for the coordination and administration of the safety program.
- C. It is the policy **AJ Construction Inc.** to cooperate in every way with the Occupational Safety and Health Administration (OSHA) and/or the Hawaii Occupational Safety and Health (HIOSH) Office and other related agencies that affect our company.
- D. Accident prevention shall be a normal routine operating responsibility of all personnel. It will be our goal to eliminate accidents from our workplace through awareness, training, employee involvement, and other programs intended to create a culture of safety within the company.
- E. Safe work methods and required safety equipment shall be used. Supervisors shall be responsible for enforcement and disciplinary actions if necessary.
- F. **Elma A. Pacleb** shall, along with **Arsenio A. Agustin**, make periodic safety inspections of the operations and shall keep good record of all findings.
- G. A mechanism to encourage and allow employee involvement in day to day operation of the company safety program will be established on each project. Some examples of mechanisms that have been successful in the past, but do not limit future employee involvement programs are: establishing a safety committee on each project; designating site and/or crew safety representatives that report to a project supervisor periodically; and holding crew safety and health tailgate meetings daily.

#### 4. DISCIPLINARY ACTION POLICY

As it is the responsibility of each manager/supervisor to train and educate each employee at **AJ Construction Inc.**, it is also the responsibility of each employee to follow all rules and regulations while employed at **AJ Construction Inc.** All managers/supervisors will enforce company rules and regulations as outlined in the Safety Program. The following are guidelines that the manager/supervisor will take when an employee fails to observe company rules and regulations:

- A. **VERBAL WARNINGS/COUNSELING:** These may include removing the employee from the job and talking to the employee. **NOTE:** These verbal warnings should be documented in a file and include an explanation of the infraction. **Employer reserves the right to terminate any employee if violation of rules or regulations occurs even on a first verbal warning.**
- B. **WRITTEN WARNING:** Written warning shall include a letter to the employee in violation of the rule or regulation. This letter shall explain the type of infraction, location and date of infraction. **Employer reserves the right to terminate any employee if violation of rules or regulations occurs even on a first written warning.**
  - 1) Upon a first violation of a rule or regulation and after one verbal warning.
  - 2) Upon noticing a flagrant or intentional infraction of a rule or regulation.
  - 3) Upon noticing a violation of a rule or regulation which endangers the safety and health of the employee, fellow employees or property.
- C. **TERMINATION:** All previous correspondence shall be attached to the termination letter along with similar information outlined in the Written Warning section of this policy.

Upon continuous and/or repeated violation of a rule or regulation which endangers the safety and health of the employee, fellow employees or property.

#### 5. HAZARD RECOGNITION/SELF-INSPECTION

It is the responsibility of AJ Construction Inc. to provide a work place that is free of recognizable hazards to employees, we have adopted this policy to achieve this goal. We will conduct "periodic inspections to identify unsafe conditions and work practices and to correct those that are found."